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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------|
| 09/486,744  | 03/01/2000  | YVES TROUILHET       | AD6530                   | 9833             |
| 23906   | 7590        | 01/10/2005           |                          |                  |
| E I DU PONT DE NEMOURS AND COMPANY<br>LEGAL PATENT RECORDS CENTER<br>BARLEY MILL PLAZA 25/1128<br>4417 LANCASTER PIKE<br>WILMINGTON, DE 19805 |             |                      | EXAMINER<br>HON, SOW FUN |                  |
|   |             |                      | ART UNIT<br>1772         | PAPER NUMBER     |

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/486,744

Applicant(s)

TROUILHET, YVES

Examiner

Sow-Fun Hon

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Rejections Repeated***

1. The 35 U.S.C. 103(a) rejections over Parks et al. as the primary reference have been repeated for the same reasons previously of record in the Office action dated 06/29/04.

### ***Response to Arguments***

2. Applicant's arguments filed 06/29/04 have been fully considered but they are not persuasive.

#### **Remarks**

3. Applicant argues that the nylon layer as claimed is an exposed layer that would contact the package contents when the packaging material is in use.
4. Applicant is respectfully apprised that the limitation of “wherein the layer of nylon is an exposed layer in contact with the package contents when the packaging material is in use” is not in the present claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The term “comprising” includes other layers covering the nylon layer.

#### **Parks in view of Zhang**

5. Applicant argues that Parks is at least deficient in that it does not teach or suggest an exposed nylon layer that would contact the package contents , and that Zhang only states that the adhesive composition provides excellent adhesion to substrates such as nylon 6, amorphous

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nylon or amorphous nylon/nylon 6, that a preferred use of the adhesive is in multilayer structures such as meat and/or cheese packaging wherein oxygen barrier properties as well as formability are required, but does not say what the layers are, that nothing in the references suggests picking nylon, identified as a substrate along with an open-ended list of barrier layers, and that nothing in the references suggests picking paper as the substrate from the various substrates of Zhang.

Applicant is respectfully apprised that Parks is the primary reference, which teaches the laminate (sandwich structure) of tie layer/amorphous nylon/adhesive (tie) layer coextruded onto the inner surface of the paperboard substrate (column 3, lines 15-20). Zhang is the secondary reference which teaches that coextruded films comprising a barrier layer and the tie layer may be laminated onto paper (column 9, lines 10-20), wherein the tie layer of the adhesive composition provides excellent adhesion to nylon 6, amorphous nylon or amorphous nylon/nylon 6 blends (column 9, lines 5-10).

6. Applicant argues that only impermissible hindsight could result from the selection from the possible combinations.

Applicant is respectfully apprised that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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7. Applicant argues that even if one were to make the selection, there is nothing to suggest modifying the structure of Parks by eliminating the required outer layer of a heat sealable olefin polymer.

Again, Applicant is respectfully apprised that the limitation of “wherein the layer of nylon is an exposed layer in contact with the package contents when the packaging material is in use” is not in the present claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The term “comprising” includes other layers covering the nylon layer.

Furthermore, Zhang does teach that the coextruded film comprising a barrier layer and tie layer is laminated onto paper (‘142, column 9, lines 10-20), suggesting that a combination of only amorphous nylon layer tied to the paper substrate for packaging meat and cheese (‘142, column 9, lines 5-10) is the result of routine experimentation by one of ordinary skill in the art at the time the invention was made, in order to obtain packaging for meat and cheese, which does not require a polyolefin layer as the product contact layer (‘767, column 3, lines 15-20) for packaging juice (‘767, column 2, lines 1-5) as taught by Parks. Modifying existing packaging for other products is part of the art of packaging.

8. Applicant argues that claim 8 differs from Park in paper thickness since [Parks teaches that the layer of paper (board) has a weight of about 244 g/m<sup>2</sup> (150 lb/ream) (‘767, column 4, lines 30-35)] while claim 8 recites a thickness of between 20 and 200 g/m<sup>2</sup>.

Applicant is respectfully apprised that Zhang does teach that the coextruded film comprising a barrier layer and tie layer is laminated onto paper (‘142, column 9, lines 10-20),

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suggesting that a combination of only amorphous nylon layer tied to the paper substrate for packaging meat and cheese ('142, column 9, lines 5-10) is the result of routine experimentation by one of ordinary skill in the art at the time the invention was made, in order to obtain packaging for meat and cheese, which does not require the higher stiffness, and hence greater substrate thickness, for packaging juice ('767, column 2, lines 1-5) as taught by Parks. Modifying existing packaging for containing other products is part of the art of packaging.

Parks in view of Zhang and Zabrocki

9. Applicant argues that there is no suggestion in Zabrocki about use in a flexible or semi-flexible packaging material with an oxygen barrier of 10 and 1000 cc/m<sup>2</sup>.day.atm and water vapor barrier between 100 and 1000 g/at 38°C and 90 % relative humidity of the present application in terms of g/100 in<sup>2</sup>.day.atm in terms of water vapor transmission rate (WVTR) at 23°C and 95 % relative humidity.

Applicant is respectfully reminded that the claimed oxygen barrier and water vapor barrier properties are inherent in the laminate comprising the amorphous nylon Selar PA 3426 of Parks, since it is the same Selar PA 3426 used by Applicant (specification, page 4, lines 35-40).

10. Applicant argues that there is no suggestion in Zabrocki of using a copolyether ester, a copolyamide or a polyurethane thermoplastic in the way claimed in claims 5-7.

Applicant is respectfully apprised that Zabrocki teaches adhesives which have unexpected synergistic increase in strength values over those of the individual components ('837, column 9, lines 30-35) and yet are extrudable ('837, column 9, lines 35-40). The adhesive blends comprise thermoplastic polyurethane and modified polyolefin ('837, column 3, lines 40-

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45) wherein the modified polyolefin is taught to be graft olefin copolymers, a specific example being a maleic anhydride grafted ethylene/vinyl acetate copolymer blend ('837, column 11, lines 15-25). Zabrocki teaches that the blends are flexible, have high tensile and tear strength, with good adhesion to a wide variety of plastics, useful in plastic laminating ('837, column 9, lines 60-68).

Parks teaches that the adhesive (tie) layer is an anhydride (maleic) grafted (modified) ethylene (ethyl/methyl/butyl) acrylate ('767, column 4, lines 45-60), which is a species of a graft olefin copolymer taught by Zabrocki. Therefore it would have been obvious to one of ordinary skill at the time the invention was made, to have blended a polyurethane thermoplastic with the anhydride grafted olefin copolymer of Parks, in order to obtain an adhesive with unexpected synergistic adhesive strength, as taught by Zabrocki.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (571)272-1492. The examiner can normally be reached Monday to Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*S. Hon*

Sow-Fun Hon

*01/07/04*

*Harold Pyon*  
HAROLD PYON

SUPERVISORY PATENT EXAMINER

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*1/5/04*